

Earlier this month the National Religious Broadcasters (NRB) held a conference call with members of the FCC's localism task force. This gave members of the NRB a forum in which to express their thoughts and comments regarding localism, focusing predominately on low power television and low power fm. NRB President, Dr. Frank Wright, and NRB members send their sincere thanks and appreciation to this Localism team for hearing our comments and making record of them.

Please find following three additional comments expressly made by members of the NRB. Localism remains a high priority for this Association in both scope and pursuit. The comments are just below and should be added to those verbally given on July 8:

1.) Kris Meade- WNGR-LP, Station Manager 2002-2004
Tigerville, SC

To Whom It May Concern,

LPFM is a great source for local, independent owners to make a voice in the community without much financial overhead. Please continue to offer LPFM Licenses.

Thank you.

2.) Roy McGreevy- KSCB-TV, Sioux Falls, SD

Further to the July 8 conference call with the NRB & the FCC, I would like to make these comments.

I am the General Manager of a 24/7 Christian TV station (K53EG) in Sioux Falls SD. We are a Low Power over the air, but on many local cable systems also. We are "Full Power" on the cable systems.

I would like to make a few comments on localism.

1. In research I find that Lower Power was "invented" to **promote localism**, i.e. to allow a method by which smaller TV stations in a community could broadcast their programs; which by the very nature of "Low Power" would presume the station was in fact locally owned and operated and serving the local community with local programming.

That was fine when there was no (or little) cable and no satellite. We now have the situation where here locally almost 83% of the population is watching TV programs either via cable or satellite. This indicates that unless the local station is either on the cable or satellite, his local programming will only be seen by about 15% of the population. True anyone who has cable can still watch "free to air", but the surveys tell us they are not!

2. The words "Low Power" has come to mean "lower quality" by many (particularly the cable operators) vs. Full Power.....in other words they say... *"If you are really serious about television you should have a full power station"*. The irony is that on cable the "POWER" part does not come into the equation, we are all of the same "POWER". So on cable the original laws that FCC set-up to allow for localism (via the Low Power stations) simply does not exist today. The Low Power localism is now NOT being controlled by the FCC but via the cable operators because there are no FCC laws to cover Low Power Must Carry except in very small towns.

The cable operators **WERE** local once, and **REALLY DID** support local television.....but now most of the cable operators are large companies with carriage decisions often being made far way from the actual town/city they serve.

3. Although we are 24/7 (been broadcasting for 25 years) and are local with local news items, Christian events, Church activities etc on a daily basis (not news like KELO TV...CBS), we are only on the local cable system in Sioux Falls by sheer grace and negotiation.....and even then NOT on the lowest cable tier. We are very grateful to our local cable company for "allowing" us to be on.

4. My complaint for years has been the unfair Must Carry rules for a low power station even if we are 24/7. The FCC LOW household numbers (lower than Sioux Falls) does not allow us to use Must Carry to be on the lowest cable pricing tier, AND also does not allow us to be alongside the other local stations.....**and we should be**. In fact I believe ALL legitimate local stations should be given cable space together. There is at least two other local stations that **ARE** Low Power and they **are** included in the lowest pricing tier and numbered alongside the other local stations.

5. WHAT CAN THE FCC DO?

- a. Again define **localism**. Previously they did, when they first promoted "Low Power", but now that has completely eroded, to where the FCC no longer has control over WHO VIEWS the Low Power stations.....i.e. it is the cable operators who decide what Low Power stations are being viewed and where.
- b. Consider increasing the threshold population number that a Low Power station can use for Must Carry in a local community. This current # of 35,000 was made when almost everyone watched TV over the air..... Surely that number could be increased due to the erosion of the "over the air" viewers.
- c. The FCC created Class A stations, which in essence has absolutely no value or purpose to getting on cable systems. I really cannot understand the purpose of Class A, because the cable operators still have the power to decide who is on the cable system. I know the FCC has had many promoting Must Carry for Class A and it has not yet got anywhere..... so I believe the FCC should also define What is the purpose of Class A?

Thank you.

3) Ken Bowles- Midwest Christian Media, Inc., Union, MO

- I. Allowing LPFM stations in urban areas, through the repeal of the so-called Radio Preservation of Act of 2000 and/or through the exercise of the FCC's current authority to allow religious applicants to place LPFM stations on 3rd adjacent channels, will increase localism.ⁱ

A. History

Hundreds of full power stations are licensed to channels that are 3rd and 2nd adjacent channels to existing stations.ⁱⁱ As of 2000, the FCC had never received a interference complaint with respect to these full power stations.ⁱⁱⁱ

Full power stations may broadcast with as much as 100,000 watts. But LPFM stations, which can not use more than 100 watts, have been banned^{iv} by existing stations through Congressional lobbying successes from 3rd and 2nd adjacent channels because of the falsehood that they would create too much interference.^v Several studies have shown that LPFM stations on 3rd and, in some cases, on 2nd adjacent channels will cause no significant interference to existing stations.^{vi}

Recently Senator John McCain said, “. . . before the Commission could act on many of the applications for this new community service, broadcasters frightened legislators into halting the full implementation of Low Power FM. Broadcasters masqueraded their true concerns about competition from a real *local* radio broadcaster in thinly veiled claims of interference. Due to the broadcasters’ subterfuge, Congress added language . . .”^{vii}

B. The ban on LPFM stations in urban areas inhibits localism.

The ban effectively disallowed LPFM stations in urban areas. However, it is in urban areas where LPFM stations will work best and where they are most needed.

First, the population density in urban areas is great enough to provide the necessary resources for LPFM stations to do a good job.

Second, communities in urban areas are generally the communities most lacking localism.

For example, Union, Missouri, has its own AM radio station. The city has a population of around 7,300 and is located in Franklin County. Union is a one-hour drive from downtown St. Louis.

Each morning on this station the residents of Union can hear funeral announcements. They can hear reports and actualities from the local school board meeting, the city counsel meeting, and the county commission meeting. The news programs include details on local fires and vehicular accidents. Local churches and Christian organizations produce preaching and music programs. Residents can post their items for sale. Listeners can question local politicians and public service officials. In the evening, local basketball and football games are broadcast. They can find out how well the fundraising is going for their new senior citizens’ center.

The county just to the East of Franklin County is St. Louis County. There is not one community in St. Louis County that experiences the degree of localism in broadcasting that is found in Union. Some of these communities are the largest cities in Missouri. With few exceptions, their only access to broadcasting is through regional^{viii} stations that never have the time to dwell on all the services needed in a specific community. For example, there are no local sports play-by-play broadcasts . . . only the Cardinals, the Rams, and the Blues. There are few local church services being broadcast because the rates charged by the stations are rates appropriate for a broadcast to a large region, not the lower rates appropriate for a single community. Generally you would not even know that your school board had met if you were to rely on St. Louis’ regional radio and television stations.

Furthermore, urban areas have diverse populations. St. Louis City and St. Louis County have Spanish and Romanian populations. None of the existing broadcast stations broadcast in Spanish or Romanian. Language is also a localism issue.

“... the Commission has long recognized that ‘every community of appreciable size has a presumptive need for its own transmission service.’”^{ix} Though there are regional radio stations with signals over these communities and minority language groups, in reality they do not have their own, specific transmission service. LPFM stations could be used to reach them.

C. The FCC must exercise its presently held authority to issue 3rd adjacent channel, LPFM construction permits to religious applicants.

The FCC has requested that Congress lift the ban on LPFM stations occupying 3rd adjacent channels.^x Senator McCain has introduced S. 2505, The Low Power Radio Act of 2004, for this purpose.^{xi} However, the Commission still has authority to issue construction permits to religious applicants for LPFM stations on 3rd adjacent channels.

The Religious Freedom Restoration Act (RFRA) requires that the FCC have a compelling interest before it prohibits LPFM stations proposed by religious applicants.^{xii} The Congressional ban did not modify RFRA or make it inactive.

It is our belief that the Commission does not have a compelling interest to keep religious LPFM stations off 3rd adjacent channels. In fact the Commission conducted a formal rule making process that resulted in applicants applying for that status.^{xiii} The Mitre Study has confirmed that the Commission does not have a compelling interest.^{xiv}

Thus the FCC has been in a continuous state of noncompliance to RFRA since it enforced modified rules to ban religious LPFM stations on 3rd adjacent channels. From the conclusion of the original rule making process, the FCC has never lacked authority to issue construction permits to religious organizations.

The Commission must immediately lift the ban on religious applicants for LPFM stations on 3rd adjacent channels.^{xv} This action is one that the FCC must take immediately and it will increase localism.

D. The Commission should give priority to all previous applicants for LPFM stations on 3rd adjacent channels.

Applicants who previously filed for LPFM stations on 3rd adjacent channels were unfairly forced out of consideration. To be fair, all of the applicants for 3rd adjacent channels who filed in any of the five initial windows should have immediate access to a window for their exclusive use. During this window these applicants would have an opportunity to show their renewed desire to be licensees of LPFM stations and to update their applications.

II. Giving LPFM stations primary service status will increase localism.^{xvi}

A. Translators eat up spectrum that could be filled by LPFM stations.

There is a lot of FM spectrum tied up by 3,842 translators and boosters.^{xvii} These translators and boosters are both commercial and noncommercial. Technically, each translator may eliminate at least one LPFM station.

Furthermore, last year a translator window reaped more than 13,000 applications. REC Networks has estimated that 42% of its top-100 communities in which LPFM had been available, were potentially eliminated from having future LPFM stations by the translator applications.^{xviii}

B. Translators are an obstruction to localism.

Because of FCC regulations, translators broadcast no local programming except for an optional 30-second per hour fundraising spot and emergency messages.^{xix} Rarely is a translator heard broadcasting a local emergency message.

It is generally believed that a LPFM station, which broadcasts local programming, could draw more listeners than a technically similar translator.

During severe weather in the Midwest, a listener could be blown away by an unannounced tornado if he listens to a translator. LPFM stations normally broadcast local weather warnings. LPFM stations are required to be a part of the Emergency Alert System^{xx} and have the capability of broadcasting local weather watches and warning.

At one particular moment in the same community, a translator could be broadcasting voice-tracked music from a studio a continent away and a LPFM station could be broadcasting a local High School football game.

A listener to a translator might be hearing only a national news broadcast while a LPFM listener could also be hearing a report of deficiencies at the nursing home where his mother resides.

A translator audience may only hear national religious ministries, but a LPFM audience may also hear local church services or local pastors on talk programs. Or a translator audience in Maplewood, Missouri, may hear the church service of a church in Maine but a LPFM audience in Maplewood may hear the church service of a church in Maplewood.

C. Translators keep local broadcasters off the air.

Translators are best suited for rural areas that do not have the resources to construct, maintain, and staff their own local radio stations. In more heavily populated areas they simply keep local broadcasters (i.e., LPFM broadcasters) off the air.

LP100 stations^{xxi} cannot replace translators. The FCC requires a specified separation.^{xxii} Therefore, translators keep LP100 stations off the air.

D. Full power regional stations can force a local station off the air.

Last year a LP100 station was forced off the air by a full power station. "What happened in Taylors, SC is the overall nature of LPFM's secondary status. LPFM must give way to full power stations."^{xxiii} In this case a regional station displaced a local station when it changed locations in accordance with current FCC rules.^{xxiv}

E. Giving primary status to LP100 stations will protect a community's local LPFM radio station.

The best solution to this portion of the localism problem would be to make the LPFM service a primary service so that LP100 stations cannot be bumped by full power stations and so LP100 stations can bump translators.^{xxv} Full power stations (classes A through C) already have this status.

F. The hardship of replacing translators with LPFM stations could be offset.

The licensees of current translators have invested resources in capital expenses. Some may also be highly motivated to provide their programming to the translator's community. Something could be done to minimize the impact on the translator licensee. The Commission could encourage optional arrangements between the parties.

For example, licensees of some existing translators may be willing to transfer their transmitter-antenna plant to LPFM construction permit holders for an agreement that the translator licensee's network feed be used for a certain period of time as a source of

programming on the LP100 when local programming is not being broadcast. For example, some translator operators produce national news broadcasts that could be used on the replacement LPFM station. Or the network's flagship program could be broadcast.

Such an arrangement could be encouraged if the FCC would also allow the LP100 station to use the full power, antenna height, and directional antenna of the replaced translator.

ⁱ This section addresses paragraph 45 of the NOI: **"We seek comment on what additional steps we could or should take to promote LPFM further."**

ⁱⁱ **By 1996 there were 322 non-translator, full-power stations on 2nd adjacent channels and 138 on 3rd adjacent channels . . . so stated the National Association of Broadcasters (NAB)** (Reply Comments, Grandfathered Short-Spaced FM Stations, MM Docket 96-120, Oct. 4, 1996, Appendix I, p. 2). **NAB does argue against removing 2nd and 3rd adjacent channel protections wholesale and allowing them to be filled with additional full power stations. The banned LPFM rules did not do this. They only allowed a moderate number of low power stations just on 3rd adjacent channels.**

ⁱⁱⁱ FCC Report and Order, Creation of Low Power Radio Service, January 20, 2000, paragraphs 73-74.

^{iv} Section 632 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 2001, (Pub. Law 106-553; 114 Stat. 2762A-111).

^v **Opponents of LPFM distributed CDs to Congressmen that misrepresented the interference to be experienced by full power stations from LPFM stations (ALLEGATION: "Crosstalk?" Low Power FM Radio Service: Allegations and Facts Factsheet, FCC, http://www.fcc.gov/Bureaus/Mass_Media/Factsheets/lpfmfact032900.html, viewed July 15, 2004, not dated). JT Communications offered an affidavit to the effect that NAB's recording used by the lobbyists was falsified** (Comments of JT Communications In the Matter of MITRE Report on 3rd Adjacent Measurements for LPFM, Consolidated Interference Report, undated, last page, footnote 2). **The opponents also misrepresented the interference to be expected, during a Congressional committee meeting** (Counter-Reply Testimony to the National Association of Broadcasters [NAB], Testimony of Christopher Maxwell, Virginia Center for the Public Press, <http://members.aol.com/wrfr/HR3439-counter.html>, viewed, July 15, 2004, updated November 2, 2000).

^{vi} Some include: Second and Third Adjacent Channel Interference Study of FM Broadcast Receivers, Project TRB-99-3, Interim Report, July 1999, which was accomplished by FCC technicians; Receiver Evaluation Project, done by Broadcast Signal Lab for the National Lawyers' Guild, Committee on Democratic Communications, June 30, 1999; and Experimental Measurements of the Third-Adjacent Channel Impacts of Low-Power FM Stations, Mitre Technical Report, May 2003, which was prepared for Congress. **An antagonist, the NAB, had to utilize creative testing procedures to develop a result that could cause even some existing stations to be taken off the air** (Low Power Radio: Technically Sound and Vastly Popular, Media Access Project, <http://www.mediaaccess.org/programs/lpfm/2pager.html>, read July 15, 2004, last modified August 24, 2000). The NAB study is found in Comments of the National Association of Broadcasters in the Matter of the Creation of a Low Power Broadcast Service, August 2, 1999, volume 2.

^{vii} Statement of Senator John McCain, Chairman, Senate Committee on Commerce, Science, and Transportation, The Low Power Radio Act of 2004, viewed at http://www.prometheusradio.org/mccain_floor_statement_lpfm.doc on June 22, 2004, no date published.

^{viii} **"Regional" is not being used in the sense defined by the FCC. In this paper it means a station not providing specific services to a single community. A station that does is called a "local" station.**

^{ix} NOI, paragraph 2.

^x Report to Congress on the Low Power FM Interference Testing Program, Pub. L. No. 106-553, February 19, 2004.

^{xi} S. 2505, <http://thomas.loc.gov/cgi-bin/query>, viewed July 16, 2004, no date published.

^{xii} Religious Freedom Restoration Act of 1993, The RJ&L Religious Liberty Archive, http://churchstatelaw.com/federalstatutes/7_2.asp, viewed July 15, 2004, last copyrighted 2004. **While the act has been found unconstitutional with respect to state and local governments, it remains in full force with respect to the federal government. The act was intentionally designed to apply to federal entities like the FCC.**

^{xiii} Report and Order in the Matter of the Creation of Low Power Radio Service, MM Docket 99-25, adopted January 20, 2000.

^{xiv} **"In summary, based both on the measured data and the theoretical analysis, MITRE has concluded that LPFM stations can be operated on third-adjacent channels with respect to existing 'Full Power' FM (FPFM) stations provided that relatively modest distance separations are maintained between any LPFM station and receivers tuned to the potentially affected FPFM station** (Executive Summary, Experimental Measurements of the Third-Adjacent Channel Impacts of Low-Power FM Stations, Mitre Technical Report, May 2003, volume 2, page xxvi).

^{xv} **MCM is not against secular organizations obtaining construction permits for LPFM stations. That would only be fair. But the FCC has been breaking the law with respect to religious organizations and we expect the Commission to rectify this situation immediately. Further damage is being done to religious organizations because the FCC opened a translator window last year that could consume channels that had been designated for LPFM stations. Perhaps the FCC's dilemma will hasten the process of making these LPFM stations available to all organizations.**

^{xvi} This section addresses paragraph 45 of the Notice of Inquiry: **" . . . should we change any of our rules to give a preference to entities with a local presence and/or local programming?"** The NOI seems to be only addressing LPFM stations and translators in the reserved portion of the band. However, the problem is greater and includes the unreserved portion.

^{xvii} Broadcast Station Totals As of March 31, 2004, FCC News, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-246473A1.pdf, viewed July 15, 2004, dated April 27, 2004.

^{xviii} Feature: Translator Invasion's Impact on LPFM Quantified, <http://www.diymedia.net/feature/lpfm/f070604.htm>, viewed July 15, 2004, posted July 7, 2004. This is a preliminary study done by REC Networks.

^{xix} 47CFR74.1231(g).

^{xx} 47CFR11.11.

^{xxi} **These are LPFM stations that are assigned 100 watts or less.**

^{xxii} 47CFR74.807(d).

^{xxiii} Leo Ashcraft quoted by John Broomall, FCC Refuses to License On-Air LPFM Station, <http://www.ccbroadcasters.com/brandnewstory.htm>, viewed July 16, 2004, published July 24, 2003.

^{xxiv} 47CFR74.809.

^{xxv} **In religious broadcasting, there were translator pioneers like the Moody Bible Institute that brought translators into areas where there was little Christian broadcasting. This was a great work. Times have changed and some communities may now be willing to support their own station. In the next paragraph we discuss how such a work can be carried on but with localism. MCM is proposing that LP10 stations continue to provide a secondary service. LP10 stations are LPFM stations that are assigned 10 watts or less. Their coverage area is less than a LP100.**